



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/591,307 Confirmation No.: 2060
Applicant : David A. Edwards, Richard P. Batycky and Lloyd Johnston
Filed : June 9, 2000
TC/A.U. : 1616
Examiner : Mina Haghighatian

Docket No. : 2685.2001-000
Customer No. : 000038421
Title : Highly Efficient Delivery of a Large Therapeutic Mass
Aerosol (As Amended)

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| CERTIFICATE OF MAILING | |
| I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on | |
| <u>April 15, 2004</u> Date | <u>Judy Breen</u> Signature |
| _____ Typed or printed name of person signing certificate | |

REQUEST FOR RECONSIDERATION OF THE PATENT TERM
ADJUSTMENT UNDER 37 C.F.R. 1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This letter is to request correction of the Patent Term Adjustment under Rule 705. The \$200 fee required by Rule 18(e) is enclosed herewith.

Pursuant to Rule 703(a), the Office was to grant a term adjustment for the number of days that exceeds 14 months from the filing date of the application to the mail date of the first action on the merits. In this case, the application was filed on June 9, 2000, providing a 14 month date of August 9, 2001. The first action on the merits was mailed on October 2, 2002. The difference, in days, is 419 days.

Rule 704 provides for reduction of the term adjustment under several situations. 704(b) provides for reduction where the Applicant failed to file a reply within 3 months

of any action. Applicants filed a reply to the action mailed on May 13, 2003 on September 25, 2003. Thus, the reduction under Rule 704(b) for Applicant delay with respect to the September 25, 2003 paper is 43 days.

This Amendment limited the claims to the subject matter allowed by the Office in the Final Office Action. Thus, the Amendment clearly placed the application in condition for allowance. Following the Amendment, the Office issued an Advisory Action on October 17, 2003, which improperly included a new ground of rejection. This fact is not disputed. Applicants filed a subsequent Reply on January 7, 2004 requesting, inter alia, withdrawal of the Finality of the Office Action. In reply, the Office action mailed a Notice of Allowance. As the September 25, 2003 Amendment placed the application in condition for allowance, the paper filed on January 7, 2004 was necessitated by the improper paper mailed by the Office, and the January 7, 2004 paper was filed within three months of the Advisory Action (which included a new ground of rejection), no further reductions should be made pursuant to filing of this second paper after final.

While a terminal disclaimer has been filed in this application to overcome a provisional, it is subject to being the second to issue. Unless the Office further delays in the issuance of this application, the terminal disclaimer will not be enforced in this application.

A patent term adjustment of 376 days is, therefore, requested. The fee required by Rule 18(e) is enclosed herewith.

Respectfully submitted,

ELMORE CRAIG, P.C.

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